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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 91204186 |
| Party | Defendant BLEC, LLC |
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| Date | 04/16/2012 |
| Attachments | Answer to Zippo Opposition.pdf (6 pages)(20034 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ZIPPMARK, INC.,

Opposer,

v.

BLEC, LLC,

Applicant.

Opposition No. 91204186

Application Serial Nos. 85/131,965; 85/131,287;
and 85/092,665

Marks: BLU & Design; BLU; and BLU CIGS

ANSWER TO COMBINED NOTICE OF OPPOSITION

Applicant BLEC, LLC (“Applicant” or “BLEC”), owner of Federal Trademark Applications: Serial No. 85/131,965 for the mark BLU & Design, Serial No. 85/131,287 for the mark BLU, and Serial No. 85/092,665 for the mark BLU CIGS, by counsel, states the following as its Answer to the Notice of Opposition filed by Opposer ZippMark, Inc., (“Opposer” or “ZippMark”):

Applicant denies that registration of these marks would give rise to a likelihood of confusion with Opposer’s asserted registered and common law trademark rights. All allegations in the Opposition not specifically admitted are denied. Applicant responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant denies the allegation that Opposer’s BLU trademarks are distinctive. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the

remaining allegations in Paragraph 1 and, accordingly, denies same. All allegations, unless specifically admitted, are denied.

2. Applicant denies that ZippMark has common law rights to BLU. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2 and, accordingly, denies same. All allegations, unless specifically admitted, are denied.

3. Applicant admits that Opposer is the owner of record of U.S. Registration No. 3299190, U.S. Registration No. 3469390, U.S. Registration No. 3606674, U.S. Registration No. 3680360, U.S. Registration No. 3299195, and U.S. Registration No. 3464056, covering the mark and services identified in those registrations. Applicant denies the remaining allegations in Paragraph 3. All allegations, unless specifically admitted, are denied.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and, accordingly, denies same. All allegations, unless specifically admitted, are denied.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and, accordingly, denies same. All allegations, unless specifically admitted, are denied.

6. Applicant admits the allegations in Paragraph 6.

7. Applicant admits the allegations in Paragraph 7.

8. Applicant admits the Examining Attorney initially refused the applied for marks. Applicant admits that the Examining Attorney revoked the initial refusal. Applicant also admits that its applied-for marks and the Zippo BLU marks are dissimilar in appearance and in connotation, the goods to which the various marks relate are dissimilar, and that purchasers of

Applicant's products are sophisticated and not likely to be confused. All allegations, unless specifically admitted, are denied.

9. Applicant denies the allegations in Paragraph 9.

10. Applicant admits the allegations in Paragraph 10.

11. Applicant denies the allegation that consent or permission would be required for use of and application to register the applied-for marks. All allegations, unless specifically admitted, are denied.

12. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and, accordingly, denies same. All allegations, unless specifically admitted, are denied.

13. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, accordingly, denies same. All allegations, unless specifically admitted, are denied.

AFFIRMATIVE DEFENSES

1. Opposer has no basis either in law or fact, to oppose registration of Applicant's marks.

2. There is no likelihood of confusion, mistake, or deception to purchasers as to the source of Opposer's goods.

3. Applicant's goods and Opposer's goods are noncompeting and ordinary consumers would not conclude that the goods share a common source.

4. Purchasers of Applicant's products are sophisticated.

5. Purchasers of Opposer's products are sophisticated.

6. Applicant's marks and Opposer's marks have very different commercial impressions.

7. Applicant's marks do not falsely suggest a connection with Opposer's marks.

8. Opposer's claims are barred by the doctrine of unclean hands or other applicable equitable principles.

9. Upon information and belief, Opposer has never used or has abandoned use of its alleged trademarks.

10. Opposer has failed to adequately maintain, police, or enforce trademark or proprietary rights it may have in its alleged trademarks.

11. Applicant denies that Opposer has been, or will be, injured in any manner by registration of Applicant's marks, denies that Opposer is entitled to any of the relief requested in the Notice of Opposition, and calls for strict proof of all of the allegations against Applicant.

12. Applicant already owns a substantially similar registered mark for substantially similar goods such that registration of Applicant's marks causes no added injury to Opposer.

13. Applicant may rely on all other valid defenses that may be developed through discovery or the evidence.

Applicant hereby appoints George R. Spatz, a member of the Bar of the State of Illinois, Robert Muckenfuss and Jodie N. Herrmann, members of the bar of the State of North Carolina, all of the following firm:

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to act as attorneys in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

Having fully answered the Notice of Opposition, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice, that Applicant's applications be allowed, and that Applicant's marks be registered.

A duplicate copy of this Answer to Combined Notice of Opposition has been sent via First Class Mail to counsel for Opposer on April 16, 2012.

Date: April 16, 2012

Respectfully Submitted,

/Jodie N. Herrmann/

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Attorneys for Applicant BLEC, LLC

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this 16th day of April, 2012, served the foregoing Answer to Combined Notice of Opposition on the following parties via first class United States Mail, postage prepaid:

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